# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:09-35755 Mojgan Boodaie** **Chapter 7**

Adv#: 2:15-01617 Farad Rashti and Mahnaz Rashti, as Individuals, an v. Boodaie et al

**#1.00** **TRIAL**

RE: [1] Adversary case 2:15-ap-01617. Complaint by Farad and Mahnaz Rashti against Mojgan Boodaie, Joseph Boodie. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(65 (Dischargeability - other)) (Walker, Holly)

Docket 1

***** VACATED *** REASON: PER SUMMARY JUDGMENT HEARING HELD ON 10-4-16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Mojgan Boodaie | Represented By<br>Stephen F Biegenzahn |

**Defendant(s):**

| | |
|---|---|
| Joseph Boodaie | Pro Se |
| Mojgan Boodaie | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Farad Rashti and Mahnaz Rashti, as | Represented By<br>Holly Walker |

**Trustee(s):**

| | |
|---|---|
| Sam S Leslie (TR) | Represented By<br>Sam S Leslie<br>Carolyn A Dye |
| David A Gill (TR) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Mojgan Boodaie** **Chapter 7**

**U.S. Trustee(s):**

United States Trustee (LA) Pro Se

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:13-27702 Morad Javedanfar** **Chapter 7**

Adv#: 2:15-01363 Yoo v. Neman et al

**#2.00** **TRIAL**

RE: [1] Adversary case 2:15-ap-01363. Complaint by Timothy J. Yoo against Morad Neman, MBN Real Estate Investments, LLC. (Charge To Estate). - Complaint to: (1) Avoid and Recover Fraudulent Transfers; (2) Avoid and Recover Preferential Transfers; and (3) Preserve Recovered Transfers for Benefit of Debtor's Estate [11 U.S.C. § 544 and California Civil Code 3439 et. seq. and 11 U.S.C. §§ 547, 548 and 550] - Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Friedman, Anthony)

fr: 3-8-16; 4-26-16; 6-28-16; 8-29-16

Docket 1

***** VACATED *** REASON: CONTINUED 1-30-17 AT 9:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Morad Javedanfar | Represented By<br>Andre A Khansari |

**Defendant(s):**

| | |
|---|---|
| MBN Real Estate Investments, LLC | Pro Se |
| Morad Neman | Pro Se |

**Joint Debtor(s):**

| | |
|---|---|
| Yaffa Javedanfar | Represented By<br>Andre A Khansari |

**Plaintiff(s):**

| | |
|---|---|
| Timothy J. Yoo | Represented By |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Morad Javedanfar** **Chapter 7**

Anthony A Friedman

**Trustee(s):**

| | |
|---|---|
| Timothy Yoo (TR) | Represented By<br>Anthony A Friedman |
| Timothy Yoo (TR) | Pro Se |

**U.S. Trustee(s):**

| | |
|---|---|
| United States Trustee (LA) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:14-11252 Cynthia Darlene Rocker** **Chapter 7**

Adv#: 2:14-01134 Simon v. Rocker

**#3.00** **TRIAL**

RE: [1] Adversary case 2:14-ap-01134. Complaint by Arnold H Simon against Cynthia Darlene Rocker . fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Moulton, Sheila)

fr. 12-18-14; 5-12-15; 5-12-15; 10-26-15; 2-28-16; 4-25-16; 7-25-16; 8-29-16

Docket 1

***** VACATED *** REASON: CONTINUED 1-30-17 AT 9:00 A.M.**

**Tentative Ruling:**

5/11/2015

Based upon the joint status conference statement, the following dates are ORDERED;

Discovery cut-off: September 30, 2015

Pretrial: October 13, 2015 at 11:00 a.m.

Trial: During the Week of October 26, 2015. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The trial day begins at 9:00 a.m.

Plaintiff shall lodge a scheduling order.

No appearance is required if submitting on the court's tentative ruling.If submitting on the tentative, please contact the judge's law clerk, Jessica Vogel at 213-894-0294 no later than 1 hour prior to the hearing.

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Cynthia Darlene Rocker** **Chapter 7**

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Cynthia Darlene Rocker | Represented By<br>George J Paukert |

**Defendant(s):**

| | |
|---|---|
| Cynthia Darlene Rocker | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Arnold H Simon | Represented By<br>Timothy C Aires |

**Trustee(s):**

| | |
|---|---|
| Sam S Leslie (TR) | Pro Se |
| Sam S Leslie (TR) | Pro Se |

**U.S. Trustee(s):**

| | |
|---|---|
| United States Trustee (LA) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-13775 Samuel Angelo Furnari** **Chapter 7**

Adv#: 2:16-01064 Avery v. Furnari Capital Funds, LLC et al

**#4.00** **Trial**

RE: [1] Adversary case 2:16-ap-01064. Complaint by Wesley H. Avery against Furnari Capital Funds, LLC, Samuel Angelo Furnari, Gloria A. Furnari. (Charge To Estate). Complaint for: (1) Avoidance and Recovery of Fraudulent Transfers; (2) Declaratory Relief; and (3) Turnover of Possession of Real Property Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)) (Hessling, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED 1-30-17 AT 9:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Samuel Angelo Furnari | Represented By<br>John D Faucher |

**Defendant(s):**

| | |
|---|---|
| Gloria A. Furnari | Pro Se |
| Samuel Angelo Furnari | Pro Se |
| Furnari Capital Funds, LLC | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Wesley H. Avery | Represented By<br>Robert A Hessling |

**Trustee(s):**

| | |
|---|---|
| Wesley H Avery (TR) | Represented By<br>Robert A Hessling |
| Wesley H Avery (TR) | Pro Se |

9:00 AM

**CONT... Samuel Angelo Furnari** **Chapter 7**

**U.S. Trustee(s):**

United States Trustee (LA) Pro Se

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-17887 Edward Leon Guy, III** **Chapter 7**

Adv#: 2:16-01071 Guy, III v. Fairmount Tire & Rubber Inc et al

**#5.00** Trial Date Set

RE: [1] Adversary case 2:16-ap-01071. Complaint by Edward Leon Guy III against Fairmount Tire & Rubber Inc , Does 1 to 10 . (Fee Not Required). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Miller, Myeasha)

Docket 1

***** VACATED *** REASON: DISMISSED 2-29-16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Edward Leon Guy III | Pro Se |

**Defendant(s):**

| | |
|---|---|
| Does 1 to 10 | Pro Se |
| Fairmount Tire & Rubber Inc | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Edward Leon Guy III | Pro Se |

**Trustee(s):**

| | |
|---|---|
| Jason M Rund (TR) | Pro Se |
| Jason M Rund (TR) | Pro Se |

**U.S. Trustee(s):**

| | |
|---|---|
| United States Trustee (LA) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-17887 Edward Leon Guy, III** **Chapter 7**

Adv#: 2:16-01108 Guy III v. Hilton Worldwide, Inc, a Deleware Corporation et

**#6.00** Trial Date Set

RE: [1] Adversary case 2:16-ap-01108. Complaint by Edward Leon Guy III against Hilton Worldwide, Inc, a Deleware Corporation; Embassy Suites, believed to be a subsidary of Hilton Wordwide Inc, and DOES 1 to 100, inclusive . (Charge To Estate). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Cowan, Sarah)

Docket 1

***** VACATED *** REASON: DISMISSED 5-11-16**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Edward Leon Guy III | Pro Se |

**Defendant(s):**

| | |
|---|---|
| Hilton Worldwide, Inc, a Deleware | Pro Se |
| DOES 1 to 100, inclusive | Pro Se |
| Embassy Suites, believed to be a | Pro Se |

**Plaintiff(s):**

| | |
|---|---|
| Edward Leon Guy III | Pro Se |

**Trustee(s):**

| | |
|---|---|
| Jason M Rund (TR) | Pro Se |
| Jason M Rund (TR) | Pro Se |

**U.S. Trustee(s):**

| | |
|---|---|
| United States Trustee (LA) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-21624 Harry Roussos** **Chapter 7**

Adv#: 2:15-01406 EHRENBERG v. Roussos et al

**#7.00** **NON- JURY TRIAL**

RE: [1] Adversary case 2:15-ap-01406. Complaint by HOWARD M EHRENBERG against Harry Roussos, Theodosios Roussos, O.F. Enterprises, L.P., a California limited partnership, Chase Bank N.A., One West Bank N.A., formerly known as OneWest Bank, FSB. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Exhibit 1 # 3 Exhibit 2 # 4 Exhibit 3 part 1 # 5 Exhibit 3 part 2 # 6 Exhibit 3 part 3 # 7 Exhibit 4 # 8 Exhibit 5 # 9 Exhibit 6 # 10 Exhibit 7 # 11 Exhibit 8) Nature of Suit: (14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(91 (Declaratory judgment)) (Katz, Ira)

FR. 11-10-15; 11-12-15; fr. 1-21-16; 2-24-16; 4-6-16; 4-14-16

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-6-16**

**Tentative Ruling:**

4/13/2016

**Introduction**

Defendants Theodosios Roussos, Paula Roussos, Harry Roussos, and Christine Roussos have stated that they will request a jury trial in this matter and will file a motion to withdraw the reference if a jury trial is unavailable in the Bankruptcy Court. The Court has previously described the core allegation in these cases as follows:

> At issue is whether a 21–year old bankruptcy sale may be set aside for fraud on the court under Fed. R. Civ. P. 60(d)(3), even in the absence of specific allegations that the fraud reduced the sales price. The fraud alleged here was so serious as to prevent the judicial machinery from performing "in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Anand v. CITIC Corp. (In re Intermagnetics Am., Inc.),* 926 F.2d 912, 916 (9th Cir.1991).

*Ehrenberg v. Roussos (In re Roussos),* 541 B.R. 721, 724-25 (Bankr. C.D. Cal. 2015).

As set forth in greater detail below, the Court finds that the Defendants are not entitled to a jury trial as to any of the Complaint's remaining four claims for relief.

**Summary of the Complaint's Allegations**

In the early 1980s, August Michaelides partnered with Theodosios Roussos ("Theodosios") and Harry Roussos ("Harry") (collectively, the "Roussos Brothers") to purchase two apartment buildings in the greater Los Angeles area: (1) a 20-unit building located at 2727–2741 Abbott Kinney Boulevard, Venice, CA ("Abbot Kinney Property") and (2) a 30-unit building located at 153 San Vicente Boulevard, Santa Monica, CA ("San Vicente Property") (collectively, the "Properties"). Complaint [Doc. No. 1] at ¶26. **[Note 1]** Pursuant to the agreement with the Roussos Brothers, August was to receive a 33 1/3% ownership interest in the Abbot Kinney Property and a 10% ownership interest in the San Vicente Property. *Id.* at ¶27.

August Michaelides died in 1992. *Id.* at ¶28. When his widow Lula Michaelides ("Michaelides") inquired about her pro-rata share of income from the Properties, she failed to receive satisfactory responses from the Roussos Brothers. *Id.* at ¶29. Michaelides then discovered that the Roussos Brothers had failed to include her husband August on title to the Properties. *Id.*

Michaelides commenced an action to quiet title in the Los Angeles Superior Court ("State Court"). **[Note 2]** *Id.* at ¶30. On March 2, 1994, the State Court entered judgment awarding Michaelides monetary damages and quieting title to the Properties. *Id.* at ¶31. On June 15, 1994, the State Court entered an amended judgment ("Amended State Court Judgment") awarding $600,000 in compensatory damages, $400,000 in punitive damages, and $10,000 in costs, and quieting Michaelides' title to the 10% interest in the San Vicente Property and the 33 1/3% interest in the Abbot Kinney Property. *Id.* at ¶¶31–32.

The Roussos Brothers retained attorney Robert Beaudry ("Beaudry") to facilitate a conspiracy in which the Properties would fraudulently be transferred out of their names and into the names of corporate entities which they secretly controlled, thereby extinguishing Michaelides' fractional interest. *Id.* at ¶33. In furtherance of the conspiracy, Beaudry formed S.M.B. and O.F., both of which were controlled by Harry and Theodosios and their spouses Paula and Christine. *Id.* at ¶¶34–36. The Roussos Brothers then filed individual chapter 11 petitions **[Note 3]** and filed a motion to sell the Properties to S.M.B. and O.F. free and clear of Michaelides' interest ("Sale Motion"). *Id.* at ¶¶37–39. On August 5, 1994, the Bankruptcy Court approved the sale, free and clear of Michaelides' interest ("Sale Order"). *Id.* at ¶40 and Exhibit 4. The Sale Order gave S.M.B. and O.F. protection as good-faith purchasers pursuant to §363

(m). *Id.*

In approving the sale, the Bankruptcy Court relied upon declarations submitted by Theodosios and Harry, which falsely stated that the sale was an arms-length transaction; that neither Theodosios or Harry held any interest in S.M.B. and O.F.; and that the Properties were over-encumbered. *Id.* at ¶41. The Bankruptcy Court would not have approved the sale had it known that Theodosios and Harry controlled S.M.B. and O.F.; that the Properties were not over-encumbered; and that the sale motion was part of the Roussos Brothers' conspiracy to dispossess Michaelides of her fractional interest. *Id.* at ¶42.

On October 19, 1994, the Roussos Brothers executed a grant deed conveying title to the Abbott Kinney Property to O.F. *Id.* at ¶45. On November 29, 1994, the Roussos Brothers executed a grand deed conveying title to the San Vicente Property to S.M.B. *Id.* at ¶46.

The Roussos Brothers' chapter 11 cases were converted to chapter 7 on May 2, 1995. **[Note 4]** Both Harry and Theodosios received discharges on January 2, 1996. **[Note 5]** Michaelides' Amended State Court Judgment was excepted from discharge. *Id.* at ¶47. The cases were closed on June 27, 2002. **[Note 6]**

On November 14, 2005, Michaelides conducted Theodosios' judgment debtor examination, during which Theodosios falsely testified that he and his brother Harry were not limited partners of S.M.B.; that he did not know who the limited partners of S.M.B. were; that he had not spoken to any of S.M.B.'s general partners; and that he and Harry had no interest in either S.M.B. or O.F. *Id.* at ¶49.

On November 14, 2005, Michaelides filed an alter ego action ("Alter Ego Complaint") in the Los Angeles Superior Court alleging that O.F. and S.M.B. were alter egos of the Roussos Brothers. The Alter Ego Complaint was dismissed. *Id.* at ¶ 50.

On July 20, 2006, Beaudry resigned from the California State Bar with charges pending relating to Beaudry's formation of sham corporations on behalf of his clients. *Id.* at ¶51.

In September and December 2014, Michaelides conducted Harry's judgment debtor examination. Harry testified that he had no interest in the Properties or in O.F. and S.M.B. *Id.* at ¶53.

In the beginning of 2015, Michaelides discovered that an arbitration action, Case No. BS138099 ("Arbitration Action"), existed between Harry and Theodosios regarding management of the Properties. *Id.* at ¶56. On June 19, 2012, Harry and his spouse Christine commenced the Arbitration Action against Theodosios and his

spouse Paula. *Id.* In connection with the Arbitration Action, David Haberbush, counsel for the Roussos Brothers, submitted a declaration stating that he had acted as legal counsel with respect to the Roussos Brothers' business operations pertaining to the Properties. *See* Declaration of David Haberbush at ¶1 (attached to the Complaint as Exhibit 8).

On June 18, 2015, Michaelides informed the United States Trustee ("UST") of the Arbitration Action. *See generally* Ex-Parte Motion to Reopen Chapter 7 Case under 11 U.S.C. §350(b) [Doc. No. 367, Case No. 2:15-bk-21624-ER]. On July 21, 2015, the UST moved to reopen Harry and Theodosios' chapter 7 cases and to appoint a Chapter 7 Trustee. The Court granted the motion on July 23, 2015. The Chapter 7 Trustee ("Plaintiff") filed the instant Complaints on August 4, 2015.

Based upon the foregoing allegations, Plaintiff seeks to vacate the Sale Order for fraud on the court pursuant to Fed. R. Civ. P. 60(d)(3), and to vacate the grant deeds transferring ownership of the Properties to O.F. and S.M.B. Complaint at ¶¶61–68 (second claim for relief). Plaintiff seeks a declaratory judgment, pursuant to 28 U.S.C. §2201, that the Properties are property of the Roussos Brothers' estates. *Id.* at ¶¶58–60 (first claim for relief). Plaintiff seeks to quiet title to the Properties as of August 5, 1994 (the date the Sale Order was entered) pursuant to California Code of Civil Procedure §761.010. *Id.* at ¶¶67–73 (third claim for relief). Plaintiff seeks turnover of the Properties pursuant to Bankruptcy Code §542. *Id.* at ¶¶74–79 (fourth claim for relief).

**Defendants Are Not Entitled to a Jury Trial**

At issue is whether the Roussos Brothers, as Chapter 11 debtors-in-possession, obtained court approval of the sale of the Properties to corporate entities they secretly controlled, and did so by submitting declarations falsely stating that the sale was at arms-length and that they had no interest in the purchaser entities. Further at issue is whether this alleged conduct made it impossible for the Bankruptcy Court to "perform in the usual manner its impartial task of adjudging" the sale motion, thereby constituting fraud on the court. *Intermagnetics*, 926 F.2d at 912. The Complaint's four claims for relief are all predicated upon this alleged fraud on the court.

"The Seventh Amendment protects a litigant's right to a jury trial only if a cause of action is legal in nature and it involves a matter of 'private right.'" *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 n.4. A jury trial is not available if the action involves a public right. *Id.* at 54–55. As explained in *Granfinanciera*:

> [T]he Federal Government need not be a party for a case to revolve around

9:00 AM

**CONT... Harry Roussos** **Chapter 7**

> "public rights." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S., at 586, 105 S.Ct., at 3335; *id.*, at 596–599, 105 S.Ct., at 3341–3343 (BRENNAN, J., concurring in judgment). The crucial question, in cases not involving the Federal Government, is whether "Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, [has] create[d] a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary."

*Id.* at 54.

The 1994 sale of the Properties in the Chapter 11 case involves a matter of public rights. That sale was conducted pursuant to §363 of the Bankruptcy Code, which is part of a detailed regulatory system enacted by Congress to restructure debts between debtors and creditors. Plaintiff's fraud on the court claim, which is at the heart of this action, is predicated upon allegations that Defendants abused the bankruptcy sale process. The fraud on the court claim is inextricably tied to the Chapter 11 sale process and therefore also involves public rights. As a result, Defendants have no Seventh Amendment right to a jury trial.

This case is distinguishable from the claims at issue in *Stern v. Marshall*, 131 S.Ct. 2594 (2011), which the Supreme Court concluded involved only private rights. The Roussos Brothers invoked the jurisdiction of the Bankruptcy Court by filing chapter 11 petitions and then filing the 1994 sale motion. Plaintiff's right to relief emanates from the actions the Roussos Brothers took in their Chapter 11 cases. Therefore, Plaintiff's right to relief "flow[s] from a federal statutory scheme" and is "'completely dependent upon' adjudication of a claim created by federal law," unlike the claims involved in *Stern*. *Id.* at 2614.

For the same reasons that Defendants are not entitled to a jury trial, the Complaint is a core proceeding, and the Court has jurisdiction and authority to enter final judgment. As discussed, the Complaint implicates public rights at the core of the Bankruptcy Code—namely, the Chapter 11 sale process which relies upon federal law to restructure liabilities between debtors and creditors.

**The Following Dates Will Apply**

Discovery cutoff: July 29, 2016
Pretrial: September 13, 2016 at 11:00 a.m.
Non-jury Trial: October 31, 2016 to and including November 4, 2016. Trial days

9:00 AM

**CONT... Harry Roussos** **Chapter 7**

commence at 9:00 a.m. and may be interrupted by motion calendars. No trial by declaration, all witnesses must be present.

**Note 1**

The Trustee filed two identical complaints—one in Harry's case (Adv. No. 2:15-ap-01406-ER) and the other in Theodosios' case (Adv. No. 2:15-ap-01404-ER). Unless otherwise indicated, all citations to the docket refer to Adv. No. 2:14-ap-01406-ER. As the complaints are identical, to avoid confusion the Court refers to the complaint in the singular.

**Note 2**

The action, *Lula Michaelides, et al. v. Theodosios Roussos, et al.*, was assigned Case No. BC054809.

**Note 3**

Theodosios and Harry's voluntary chapter 11 petitions were filed on June 14, 1993. The cases were jointly administered. Case No. 1:93-bk-31261-AG pertains to Harry; Case No. 1:93-bk-31265-AG pertains to Theodosios. When the cases were reopened in 2015, new case numbers were assigned: Case No. 2:15-bk-21624-ER pertains to Harry; Case No. 2:15-bk-21626-ER pertains to Theodosios.

**Note 4**

*See* Doc. No. 34, Case No. 2:15-bk-21624-ER (order denying confirmation of Harry and Theodosios' joint consolidated second amended plan of reorganization and converting the cases to chapter 7); Doc. No. 12, Case No. 2:15-bk-21626-ER (same order in Theodosios' jointly-administered case).

**Note 5**

*See* Doc. No. 101, Case No. 2:15-bk-21624-ER (discharge of Harry); Doc. No. 48, Case No. 2:15-bk-21626-ER (discharge of Theodosios).

**Note 6**

*See* Doc. No. 362, Case No. 2:15-bk-21624-ER (order closing Harry's case); Doc. No. 80, Case No. 2:15-bk-21626-ER (order closing Theodosios' case).

**Party Information**

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Harry Roussos** **Chapter 7**

**Debtor(s):**

| | |
|---|---|
| Harry Roussos | Represented By<br>David Burkenroad - DISBARRED - |

**Defendant(s):**

| | |
|---|---|
| S.M.B. Management, Inc., a | Pro Se |
| S.M.B. Investors Associates, L.P., a | Pro Se |
| Christine Roussos | Pro Se |
| Does 1 Through 50 | Pro Se |
| Paula Roussos | Pro Se |
| LIRO, INC., a California corporation | Pro Se |
| Theodosios Roussos | Pro Se |
| Harry Roussos | Pro Se |
| O.F. Enterprises, L.P., a California | Pro Se |
| One West Bank N.A., formerly | Pro Se |
| Chase Bank N.A. | Pro Se |

**Interested Party(s):**

| | |
|---|---|
| Courtesy NEF | Represented By<br>Daniel A Lev |

**Plaintiff(s):**

| | |
|---|---|
| HOWARD M EHRENBERG | Represented By<br>Ira Benjamin Katz |

**Special Counsel(s):**

| | |
|---|---|
| Robert Alan Weinberg | Represented By<br>Robert A Weinberg |

**Trustee(s):**

| | |
|---|---|
| Howard M Ehrenberg (TR) | Represented By |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Harry Roussos** **Chapter 7**

Ira Benjamin Katz

Howard M Ehrenberg (TR) Pro Se

**U.S. Trustee(s):**

United States Trustee (LA) Pro Se

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-21626 Theodosios Roussos** **Chapter 7**

Adv#: 2:15-01404 Ehrenberg v. Roussos et al

**#8.00** **NON-JURY TRIAL** RE: [1] Adversary case 2:15-ap-01404. Complaint by Howard M. Ehrenberg against Theodosios Roussos, Harry Roussos, O.F. Enterprises, L.P., a California limited partnership. (Charge To Estate). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Exhibit 1 # 3 Exhibit 2 # 4 Exhibit 3 # 5 Exhibit 3 part 2 # 6 Exhibit 3 part 3 # 7 Exhibit 4 # 8 Exhibit 5 # 9 Exhibit 6 # 10 Exhibit 7 # 11 Exhibit 8) Nature of Suit: (14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)),(91 (Declaratory judgment)) (Katz, Ira)

fr. 11-10-15; 11-12-15; fr. 1-21-16; 2-24-16; 4-6-16

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-6-16**

**Tentative Ruling:**

4/13/2016

**Introduction**

Defendants Theodosios Roussos, Paula Roussos, Harry Roussos, and Christine Roussos have stated that they will request a jury trial in this matter and will file a motion to withdraw the reference if a jury trial is unavailable in the Bankruptcy Court. The Court has previously described the core allegation in these cases as follows:

> At issue is whether a 21–year old bankruptcy sale may be set aside for fraud on the court under Fed. R. Civ. P. 60(d)(3), even in the absence of specific allegations that the fraud reduced the sales price. The fraud alleged here was so serious as to prevent the judicial machinery from performing "in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Anand v. CITIC Corp. (In re Intermagnetics Am., Inc.),* 926 F.2d 912, 916 (9th Cir.1991).

*Ehrenberg v. Roussos (In re Roussos),* 541 B.R. 721, 724-25 (Bankr. C.D. Cal. 2015).

As set forth in greater detail below, the Court finds that the Defendants are not entitled to a jury trial as to any of the Complaint's remaining four claims for relief.

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**CONT... Theodosios Roussos** **Chapter 7**

**Summary of the Complaint's Allegations**

In the early 1980s, August Michaelides partnered with Theodosios Roussos ("Theodosios") and Harry Roussos ("Harry") (collectively, the "Roussos Brothers") to purchase two apartment buildings in the greater Los Angeles area: (1) a 20-unit building located at 2727–2741 Abbott Kinney Boulevard, Venice, CA ("Abbot Kinney Property") and (2) a 30-unit building located at 153 San Vicente Boulevard, Santa Monica, CA ("San Vicente Property") (collectively, the "Properties"). Complaint [Doc. No. 1] at ¶26. **[Note 1]** Pursuant to the agreement with the Roussos Brothers, August was to receive a 33 1/3% ownership interest in the Abbot Kinney Property and a 10% ownership interest in the San Vicente Property. *Id.* at ¶27.

August Michaelides died in 1992. *Id.* at ¶28. When his widow Lula Michaelides ("Michaelides") inquired about her pro-rata share of income from the Properties, she failed to receive satisfactory responses from the Roussos Brothers. *Id.* at ¶29. Michaelides then discovered that the Roussos Brothers had failed to include her husband August on title to the Properties. *Id.*

Michaelides commenced an action to quiet title in the Los Angeles Superior Court ("State Court"). **[Note 2]** *Id.* at ¶30. On March 2, 1994, the State Court entered judgment awarding Michaelides monetary damages and quieting title to the Properties. *Id.* at ¶31. On June 15, 1994, the State Court entered an amended judgment ("Amended State Court Judgment") awarding $600,000 in compensatory damages, $400,000 in punitive damages, and $10,000 in costs, and quieting Michaelides' title to the 10% interest in the San Vicente Property and the 33 1/3% interest in the Abbot Kinney Property. *Id.* at ¶¶31–32.

The Roussos Brothers retained attorney Robert Beaudry ("Beaudry") to facilitate a conspiracy in which the Properties would fraudulently be transferred out of their names and into the names of corporate entities which they secretly controlled, thereby extinguishing Michaelides' fractional interest. *Id.* at ¶33. In furtherance of the conspiracy, Beaudry formed S.M.B. and O.F., both of which were controlled by Harry and Theodosios and their spouses Paula and Christine. *Id.* at ¶¶34–36. The Roussos Brothers then filed individual chapter 11 petitions **[Note 3]** and filed a motion to sell the Properties to S.M.B. and O.F. free and clear of Michaelides' interest ("Sale Motion"). *Id.* at ¶¶37–39. On August 5, 1994, the Bankruptcy Court approved the sale, free and clear of Michaelides' interest ("Sale Order"). *Id.* at ¶40 and Exhibit 4. The Sale Order gave S.M.B. and O.F. protection as good-faith purchasers pursuant to §363 (m). *Id.*

In approving the sale, the Bankruptcy Court relied upon declarations submitted by

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**CONT... Theodosios Roussos** **Chapter 7**

Theodosios and Harry, which falsely stated that the sale was an arms-length transaction; that neither Theodosios or Harry held any interest in S.M.B. and O.F.; and that the Properties were over-encumbered. *Id.* at ¶41. The Bankruptcy Court would not have approved the sale had it known that Theodosios and Harry controlled S.M.B. and O.F.; that the Properties were not over-encumbered; and that the sale motion was part of the Roussos Brothers' conspiracy to dispossess Michaelides of her fractional interest. *Id.* at ¶42.

On October 19, 1994, the Roussos Brothers executed a grant deed conveying title to the Abbott Kinney Property to O.F. *Id.* at ¶45. On November 29, 1994, the Roussos Brothers executed a grand deed conveying title to the San Vicente Property to S.M.B. *Id.* at ¶46.

The Roussos Brothers' chapter 11 cases were converted to chapter 7 on May 2, 1995. **[Note 4]** Both Harry and Theodosios received discharges on January 2, 1996. **[Note 5]** Michaelides' Amended State Court Judgment was excepted from discharge. *Id.* at ¶47. The cases were closed on June 27, 2002. **[Note 6]**

On November 14, 2005, Michaelides conducted Theodosios' judgment debtor examination, during which Theodosios falsely testified that he and his brother Harry were not limited partners of S.M.B.; that he did not know who the limited partners of S.M.B. were; that he had not spoken to any of S.M.B.'s general partners; and that he and Harry had no interest in either S.M.B. or O.F. *Id.* at ¶49.

On November 14, 2005, Michaelides filed an alter ego action ("Alter Ego Complaint") in the Los Angeles Superior Court alleging that O.F. and S.M.B. were alter egos of the Roussos Brothers. The Alter Ego Complaint was dismissed. *Id.* at ¶ 50.

On July 20, 2006, Beaudry resigned from the California State Bar with charges pending relating to Beaudry's formation of sham corporations on behalf of his clients. *Id.* at ¶51.

In September and December 2014, Michaelides conducted Harry's judgment debtor examination. Harry testified that he had no interest in the Properties or in O.F. and S.M.B. *Id.* at ¶53.

In the beginning of 2015, Michaelides discovered that an arbitration action, Case No. BS138099 ("Arbitration Action"), existed between Harry and Theodosios regarding management of the Properties. *Id.* at ¶56. On June 19, 2012, Harry and his spouse Christine commenced the Arbitration Action against Theodosios and his spouse Paula. *Id.* In connection with the Arbitration Action, David Haberbush, counsel for the Roussos Brothers, submitted a declaration stating that he had acted as

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**CONT... Theodosios Roussos** **Chapter 7**

legal counsel with respect to the Roussos Brothers' business operations pertaining to the Properties. *See* Declaration of David Haberbush at ¶1 (attached to the Complaint as Exhibit 8).

On June 18, 2015, Michaelides informed the United States Trustee ("UST") of the Arbitration Action. *See generally* Ex-Parte Motion to Reopen Chapter 7 Case under 11 U.S.C. §350(b) [Doc. No. 367, Case No. 2:15-bk-21624-ER]. On July 21, 2015, the UST moved to reopen Harry and Theodosios' chapter 7 cases and to appoint a Chapter 7 Trustee. The Court granted the motion on July 23, 2015. The Chapter 7 Trustee ("Plaintiff") filed the instant Complaints on August 4, 2015.

Based upon the foregoing allegations, Plaintiff seeks to vacate the Sale Order for fraud on the court pursuant to Fed. R. Civ. P. 60(d)(3), and to vacate the grant deeds transferring ownership of the Properties to O.F. and S.M.B. Complaint at ¶¶61–68 (second claim for relief). Plaintiff seeks a declaratory judgment, pursuant to 28 U.S.C. §2201, that the Properties are property of the Roussos Brothers' estates. *Id.* at ¶¶58–60 (first claim for relief). Plaintiff seeks to quiet title to the Properties as of August 5, 1994 (the date the Sale Order was entered) pursuant to California Code of Civil Procedure §761.010. *Id.* at ¶¶67–73 (third claim for relief). Plaintiff seeks turnover of the Properties pursuant to Bankruptcy Code §542. *Id.* at ¶¶74–79 (fourth claim for relief).

**Defendants Are Not Entitled to a Jury Trial**

At issue is whether the Roussos Brothers, as Chapter 11 debtors-in-possession, obtained court approval of the sale of the Properties to corporate entities they secretly controlled, and did so by submitting declarations falsely stating that the sale was at arms-length and that they had no interest in the purchaser entities. Further at issue is whether this alleged conduct made it impossible for the Bankruptcy Court to "perform in the usual manner its impartial task of adjudging" the sale motion, thereby constituting fraud on the court. *Intermagnetics*, 926 F.2d at 912. The Complaint's four claims for relief are all predicated upon this alleged fraud on the court.

"The Seventh Amendment protects a litigant's right to a jury trial only if a cause of action is legal in nature and it involves a matter of 'private right.'" *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 n.4. A jury trial is not available if the action involves a public right. *Id.* at 54–55. As explained in *Granfinanciera*:

> [T]he Federal Government need not be a party for a case to revolve around "public rights." *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S., at 586, 105 S.Ct., at 3335; *id.*, at 596–599, 105 S.Ct., at 3341–3343

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**CONT... Theodosios Roussos** **Chapter 7**

> (BRENNAN, J., concurring in judgment). The crucial question, in cases not involving the Federal Government, is whether "Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, [has] create[d] a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary."

*Id.* at 54.

The 1994 sale of the Properties in the Chapter 11 case involves a matter of public rights. That sale was conducted pursuant to §363 of the Bankruptcy Code, which is part of a detailed regulatory system enacted by Congress to restructure debts between debtors and creditors. Plaintiff's fraud on the court claim, which is at the heart of this action, is predicated upon allegations that Defendants abused the bankruptcy sale process. The fraud on the court claim is inextricably tied to the Chapter 11 sale process and therefore also involves public rights. As a result, Defendants have no Seventh Amendment right to a jury trial.

This case is distinguishable from the claims at issue in *Stern v. Marshall*, 131 S.Ct. 2594 (2011), which the Supreme Court concluded involved only private rights. The Roussos Brothers invoked the jurisdiction of the Bankruptcy Court by filing chapter 11 petitions and then filing the 1994 sale motion. Plaintiff's right to relief emanates from the actions the Roussos Brothers took in their Chapter 11 cases. Therefore, Plaintiff's right to relief "flow[s] from a federal statutory scheme" and is "'completely dependent upon' adjudication of a claim created by federal law," unlike the claims involved in *Stern*. *Id.* at 2614.

For the same reasons that Defendants are not entitled to a jury trial, the Complaint is a core proceeding, and the Court has jurisdiction and authority to enter final judgment. As discussed, the Complaint implicates public rights at the core of the Bankruptcy Code—namely, the Chapter 11 sale process which relies upon federal law to restructure liabilities between debtors and creditors.

**The Following Dates Will Apply**

Discovery cutoff: July 29, 2016
Pretrial: September 13, 2016 at 11:00 a.m.
Non-jury Trial: October 31, 2016 to and including November 4, 2016. Trial days commence at 9:00 a.m. and may be interrupted by motion calendars. No trial by declaration, all witnesses must be present.

9:00 AM
**CONT... Theodosios Roussos** **Chapter 7**

**Note 1**

The Trustee filed two identical complaints—one in Harry's case (Adv. No. 2:15-ap-01406-ER) and the other in Theodosios' case (Adv. No. 2:15-ap-01404-ER). Unless otherwise indicated, all citations to the docket refer to Adv. No. 2:14-ap-01406-ER. As the complaints are identical, to avoid confusion the Court refers to the complaint in the singular.

**Note 2**

The action, *Lula Michaelides, et al. v. Theodosios Roussos, et al.*, was assigned Case No. BC054809.

**Note 3**

Theodosios and Harry's voluntary chapter 11 petitions were filed on June 14, 1993. The cases were jointly administered. Case No. 1:93-bk-31261-AG pertains to Harry; Case No. 1:93-bk-31265-AG pertains to Theodosios. When the cases were reopened in 2015, new case numbers were assigned: Case No. 2:15-bk-21624-ER pertains to Harry; Case No. 2:15-bk-21626-ER pertains to Theodosios.

**Note 4**

*See* Doc. No. 34, Case No. 2:15-bk-21624-ER (order denying confirmation of Harry and Theodosios' joint consolidated second amended plan of reorganization and converting the cases to chapter 7); Doc. No. 12, Case No. 2:15-bk-21626-ER (same order in Theodosios' jointly-administered case).

**Note 5**

*See* Doc. No. 101, Case No. 2:15-bk-21624-ER (discharge of Harry); Doc. No. 48, Case No. 2:15-bk-21626-ER (discharge of Theodosios).

**Note 6**

*See* Doc. No. 362, Case No. 2:15-bk-21624-ER (order closing Harry's case); Doc. No. 80, Case No. 2:15-bk-21626-ER (order closing Theodosios' case).

**Party Information**

**Debtor(s):**

Theodosios Roussos — Represented By
David Burkenroad - DISBARRED -

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Theodosios Roussos** **Chapter 7**

**Defendant(s):**

| | |
|---|---|
| Paula Roussos | Pro Se |
| Christine Roussos | Pro Se |
| Chase Bank N.A. | Pro Se |
| Does 1 Through 50 | Pro Se |
| ONEWEST BANK N.A. | Pro Se |
| S.M.B. Management, Inc., a | Pro Se |
| Harry Roussos | Pro Se |
| Theodosios Roussos | Pro Se |
| O.F. Enterprises, L.P., a California | Pro Se |
| S.M.B. Investors Associates, L.P., a | Pro Se |
| LIRO, INC., a California corporation | Pro Se |

**Interested Party(s):**

| | |
|---|---|
| Courtesy NEF | Represented By<br>Daniel A Lev |

**Plaintiff(s):**

| | |
|---|---|
| Howard M. Ehrenberg | Represented By<br>Ira Benjamin Katz |

**Special Counsel(s):**

| | |
|---|---|
| Robert Alan Weinberg | Represented By<br>Robert A Weinberg |

**Trustee(s):**

| | |
|---|---|
| Howard M Ehrenberg (TR) | Represented By<br>Ira Benjamin Katz |
| Howard M Ehrenberg (TR) | Pro Se |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**CONT... Theodosios Roussos** **Chapter 7**

**U.S. Trustee(s):**

United States Trustee (LA) Pro Se

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

9:00 AM

**2:15-22478 Toby John Grear** **Chapter 7**

Adv#: 2:15-01586 Jones v. Grear

**#9.00** **Trial** Date Set re [10] Amended Complaint

Docket 0

***** VACATED *** REASON: STATUS CONFERENCE 12-13-16 AT 10:00 A.M.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Toby John Grear | Represented By<br>Sylvia Lew |

**Defendant(s):**

| | |
|---|---|
| Toby John Grear | Represented By<br>Kevin S Lacey |

**Plaintiff(s):**

| | |
|---|---|
| Jessica Jones | Represented By<br>Paul E Heidenreich |

**Trustee(s):**

| | |
|---|---|
| Richard K Diamond (TR) | Pro Se |
| Richard K Diamond (TR) | Pro Se |

**U.S. Trustee(s):**

| | |
|---|---|
| United States Trustee (LA) | Pro Se |

10:00 AM
**2:14-26032 Pierce Henry O'Donnell** **Chapter 7**

**#100.00** HearingRE: [133] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 NISSAN MAXIMA, VIN 1N4AA5AP6BC855965 . (Wang, Jennifer)

Docket 133

**Tentative Ruling:**

**Tentative Ruling:**

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf.* Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt,

10:00 AM

**CONT... Pierce Henry O'Donnell** **Chapter 7**

the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

**Party Information**

**Debtor(s):**

Pierce Henry O'Donnell — Represented By Peter T Steinberg

**Trustee(s):**

Brad D Krasnoff (TR) — Represented By Diane C Weil

10:00 AM
**2:16-22222 Natalia Manzary** **Chapter 7**

**#101.00** HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 712 Mercury Avenue, Lompoc, CA 93436 (In Rem) with Proof of Service.

Docket 12

**Tentative Ruling:**

10/28/2016

**Tentative Ruling:**

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf.* Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale was held on September 15, 2015. The Movant filed an unlawful detainer action on August 19, 2016.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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**CONT... Natalia Manzary** **Chapter 7**

The Court also finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Rebecca Lang in support of Motion at paragraph 18.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**SUBMISSION PROCEDURE**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

**Party Information**

**Debtor(s):**

Natalia Manzary Pro Se

**Trustee(s):**

Elissa Miller (TR) Pro Se

10:00 AM
**2:16-12145 Arto Atmadjian** **Chapter 11**

**#102.00** HearingRE: [96] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2378 Buckingham Ln., Los Angeles, CA 90077 with Proof of Service.

Docket 96

**Tentative Ruling:**

10/28/2016

**Pleadings Filed and Reviewed**

- Stay-Relief Motion:
  - Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 ("Motion") [Doc. No. 96]
  - Opposition to Kinecta Federal Credit Union's Motion for Relief from the Automatic Stay ("Opposition") [Doc. No. 98]
  - Monthly Operating Report for the Month Ending September 30, 2016 [Doc. No. 100]

**Facts and Summary of Pleadings**

On February 22, 2016, Kinecta Federal Credit Union ("Movant") filed the instant Motion for relief from the automatic stay. Doc. No. 96. For the reasons set forth below, the Court DENIES the Motion.

Background and Procedural History

On February 22, 2016, the Debtor filed a voluntary chapter 7 petition ("Petition"). Doc. No. 1. The Petition listed real property located at 2378 Buckingham Lane, Los Angeles, CA 90077 ("Property") with a fair market value ("FMV") of $1,950,000. *Id.* The following liens, in order of priority, encumber the Property: (1) Movant in the amount of $1,562,581.10, (2) Movant's second lien, not subject to this Motion, in the amount of $204,835.00, and (3) Sarkis Nourian in the amount of $225,000.00. Motion at 8, *see also* Doc. No. 1 at 20-22. On June 28, 2016, the Court

10:00 AM

**CONT... Arto Atmadjian** **Chapter 11**

entered an order, converting the Debtor's case to chapter 11 ("Conversion Order"). Doc. No. 72. The Conversion Order simultaneously denied without prejudice a previously stay-relief motion filed by the Movant, in order to allow the Debtor "an opportunity to administer the estate as debtor-in-possession." *Id.*

On October 4, 2016, the Movant filed the Motion. Doc. No. 96. The Movant seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2), or, in the alternative, for an order of adequate protection. Motion at 5. The Movant avers that cause exists under § 362(d)(1) because of a lack of an equity cushion. Further, the Movant represents that the Debtor has no equity in the Property, calculated at -$42,416.10,**[FN 1]** and the Property is not necessary to an effective reorganization. *Id.* at 4, 8. The Motion calculates the lack of equity using the FMV listed in the Debtor's Schedule A, i.e. $1,950,000. Doc. No. 1.

On October 17, 2016, the Debtor filed the Opposition. Doc. No. 98. The Debtor asserts that the Movant's interest is adequately protected and the Property is necessary to an effective reorganization. Opposition at 2. The Debtor submits that the FMV of $1,950,000 listed in the Debtor's Schedule A is no longer accurate. In preparing the Petition, the Debtor used a Uniform Residential Appraisal Report ("Appraisal Report"), prepared by Brent M. Friedland, a licensed California Residential Appraiser, which reflected the $1,950,000 figure. Since the Petition, the Debtor contacted Joe Babajian of Rodeo Realty and Arline Bolin of Nelson, Shelton, & Associates, whom valued the Property in the range of $2,100,000 to $2,150,000. Both opinions are based on a recent comparable sale of property that sold for $2,185,000. The comparable sale contained the same square footage as the Property, but with the addition of a private pool. Based on the two opinions, the Debtor now believes the FMV of the Property is $2,100,000. Using the Movant's own calculations, the Debtor calculates a 19.9%**[FN 2]** equity cushion and using the Debtor's FMV, the Debtor calculates a 25.5%**[FN 3]** equity cushion. The Debtor has reached out to the Movant and believes that he will enter an adequate protection agreement with the Movant.

As of the date of this tentative ruling, the Movant has not file a reply.

**Findings of Fact and Conclusions of Law**

10:00 AM

**CONT... Arto Atmadjian** **Chapter 11**

Bankruptcy Code § 362(d)(1) allows stay-relief for cause, which is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (*citing Baldino v. Wilson* (*In re Wilson*), 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)). Here, this Court includes deducting the costs of sale**[FN 4]** from a property's FMV to determine whether an equity cushion exists. *See In re Pitts*, 2 B.R. 476, 478 (Bankr. C.D. Cal. 1979); *see also La Jolla Mortg. Fund v. Rancho El Cajon Associates*, 18 B.R. 283, 289 (Bankr. S.D. Cal. 1982) (reducing the equity further by an "amount sufficient to cover the usual costs of foreclosure and sale"). The Court must determine the appropriate FMV of the Property. The Debtor listed the Property's FMV in Schedule A at $1,950,000. Yet, the Debtor's previous chapter 7 trustee allegedly valued the Property between $2,250,000 and $2,385,000. *See* Doc. Nos. 39, 49. Thus, the Debtor's proposed value of $2,100,000 seems appropriate in the context of this Motion.

Using the Debtor's proposed FMV of the Property, the Court calculates a 17.6% equity cushion.**[FN 5]** While the Ninth Circuit has established that an equity cushion of 20.4% constitutes adequate protection for a secured creditor, it is unclear in this context whether 17.6% sufficiently qualifies. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral). However, the Debtor's September monthly operating report indicates that the Debtor continues to make mortgage payments to the Movant in the amount of $11,600.61 since the Conversion Order. Doc. No. 100. Therefore, taken together, the Court finds that the Movant is adequately protected under § 362(d)(1).

Under 11 U.S.C. § 362(d)(2), the court shall grant relief if the debtor lacks equity and the property is not essential to reorganization that is in prospect. The U.S. Supreme Court explained:

> Once the movant under § 362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to establish that the collateral at issue is "necessary to an effective reorganization." *See* § 362(g). What this requires is not merely

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**CONT... Arto Atmadjian** **Chapter 11**

> a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that *is in prospect*. This means, as many lower courts, including the en banc court in this case, have properly said that there must be "a reasonable possibility of a successful reorganization within a reasonable time."

*United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375–76 (1988) (emphasis in original). Here, there is no equity in the Property as the total amount of liens and the cost of sale equals $2,160,416.10, which exceeds the FMV of the Property at $2,100,000. However, the Court finds that the Property is necessary to an effective reorganization as the Property is the Debtor's only listed real property asset and the Debtor, presumptively, contemplates filing a chapter 11 plan. In this regard, the Court will impose deadlines to file a disclosure statement and plan, stated below.

Based on the foregoing, the Court DENIES the Motion. In light of the lack of progress made in confirming an effective plan of reorganization, the Court finds it appropriate to impose the following deadlines: the Debtor shall file and receive approval of a disclosure statement by no later than **January 6, 2017** and must confirm a chapter 11 plan of reorganization by no later than **March 31, 2017.** Failure to receive approval of the disclosure statement or confirmation of a plan within these deadlines may constitute cause for the Court to convert or dismiss the case under 11 U.S.C. § 1112(b) without further notice or hearing.

The Debtor shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**Note 1:** The Movant arrives at this calculation by subtracting all liens on the Property from the Property's FMV, as listed in the Debtor's Schedule A, i.e. $1,950,000.00 (FMV) - ($1,562,581.10 + $204,835.00 + $225,000.00) = $ -42,416.10

**Note 2:** The Debtor arrives at this calculation by subtracting the Movant's lien from the FMV to calculate the equity, i.e. $1,950,000.00 (FMV) - $1,562.581.10 (Movant's lien) = $387,418.90 (Equity). The Debtor then calculates the equity amount divided by

10:00 AM

**CONT... Arto Atmadjian** **Chapter 11**

the FMV, i.e. $387,418.90 / $1,950,000.00 = 0.1986 or 19.9%.

**Note 3:** The Debtor arrives at this calculation by subtracting the Movant's lien from the Debtor's newly proposed FMV to calculate the equity, i.e. $2,100,000.00 (FMV) - $1,562.581.10 (Movant's lien) = $537,418.90 (Equity). The Debtor then calculates the equity amount divided by the FMV, i.e. $537,418.90 / $2,100,000.00 = 0.2559 or 25.5%.

**Note 4:** The Court calculates the costs of sale at 8 % of the total FMV.

**Note 5:** The Court arrives at this calculation by including the cost of sale, i.e. $2,100,000 (FMV) – ($1,562,581.10 (Movant's lien) + $168,000 (Cost of Sale)) = $369,418.90 (Equity). The Court then calculates the equity divided by the FMV $369,418.90 / $2,100,000 = 0.1759 or 17.6%.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

**Party Information**

**Debtor(s):**

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

10:00 AM
**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

**#103.00** Hearing
RE: [444] Motion for Relief from Stay

Docket 444

**Tentative Ruling:**

10/28/2016: The Motion is GRANTED for the reasons set forth below.

**Pleadings Filed and Reviewed:**

1) Notice of Motion and Motion for Relief from the Automatic Stay ("Motion") [Doc. No. 444]
2) Limited Objection to Motion of Elisa Villarreal for Relief from the Automatic Stay ("Objection") [Doc. No. 460]
3) Reply Brief in Support of Ms. Villarreal's Motion for Relief from the Automatic Stay ("Reply") [Doc. No. 470]

## I. Facts and Summary of Pleadings

Elisa Villarreal ("Movant") seeks stay-relief against Gardens Regional Hospital and Medical Center, Inc. ("Debtor") pursuant to §362(d)(1), so that Movant may prosecute an action pending against the Debtor in the Los Angeles Superior Court (the "State Court Action"). The State Court Action alleges, *inter alia*, that Debtor prematurely discharged Movant, a homeless woman with acute mental and other health related issues, by dumping her in Skid Row. The State Court Action asserts claims for elder abuse and neglect, negligence, intentional infliction of emotional distress, and false imprisonment.

Debtor does not oppose the Motion to the extent that it seeks stay-relief to recover from the Debtor's insurance policies (although the Debtor makes no representations regarding the absence or presence of any such insurance policies). Debtor opposes the Motion to the extent that it allows the State Court Action's claims for intentional torts, including false imprisonment and intentional infliction of emotional distress, to go forward. Debtor states that intentional torts and punitive damages are generally not

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**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

covered under insurance law. Debtor's position is that the stay should be modified solely to allow the State Court Action to proceed with respect to claims as which there insurance coverage exists. Debtor asserts that the automatic stay should prevent the State Court Action from proceeding as to the intentional tort claims for which there is no insurance coverage.

Movant argues that the issue of the Debtor's insurance coverage can be determined at a later date, depending upon the outcome of the State Court Action. Movant maintains that the stay should be modified to permit the State Court Action to proceed as to all claims alleged in the complaint.

## II. Findings and Conclusions

The bifurcation of the State Court Action that would be required if the stay were modified to permit only certain claims to go forward would be inefficient and costly. In the Motion, Movant states that she seeks recovery only from applicable insurance, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate. Because Movant's recovery will be limited to applicable insurance absent further order of the Court, it is not necessary to stay the prosecution of claims for which insurance coverage may not exist.

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to enforce her remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. Movant is permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the Unites States Code.

Movant shall lodge a conforming order within seven days of the hearing.

**Party Information**

**Debtor(s):**

| | |
|---|---|
| Gardens Regional Hospital and | Represented By<br>Samuel R Maizel<br>John A Moe<br>Steven J. Katzman |

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

10:00 AM

**2:15-29494 Group 6842, LLC, a California Limited Liability Co** **Chapter 11**

**#104.00** HearingRE: [259] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM;

Docket 259

**Tentative Ruling:**

10/28/2016

**Tentative Ruling:**

This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2) . The failure of the debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). *Cf.* Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The claim is insured. Movant may seek recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or estate property.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the Unites States Code. All other relief is denied.

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**CONT... Group 6842, LLC, a California Limited Liability Co** **Chapter 11**

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

**Party Information**

**Debtor(s):**

Group 6842, LLC, a California — Represented By
Garrick A Hollander
Andrew B Levin

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

10:00 AM

**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

**#105.00** Hearing re [395] Debtors Motion To Reject Executory Contract With J.S.E. Emergency Medical Group, Inc., Pursuant To 11 U.S.C. § 365(A).

FR. 10-26-16

Docket 0

***** VACATED *** REASON: WILL BE HEARD AT 2:00 P.M. TODAY.**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Gardens Regional Hospital and — Represented By
Samuel R Maizel
John A Moe
Steven J. Katzman

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

2:00 PM

**2:16-17463 Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

**#200.00** Hearing re [395] Debtors Motion To Reject Executory Contract With J.S.E. Emergency Medical Group, Inc., Pursuant To 11 U.S.C. § 365(A).

FR. 10-26-16

Docket 0

**Tentative Ruling:**

10/28/2016: For the reasons set forth below, the Debtor's Motion to reject the executory contract with JSE is GRANTED.

**Pleadings Filed and Reviewed:**

1) Debtor's Notice of Motion and Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) ("Motion") [Doc. 395]
2) Opposition to Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) and Request for Hearing ("Opposition") [Doc. No. 433]
3) Debtor's Reply to Opposition to Debtor's Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) ("Reply") [Doc. No. 457]
4) Joinder to Debtor's Reply to Opposition to Debtor's Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365 (a) [by Official Committee of Unsecured Creditors] [Doc. No. 465]
5) Emergency Motion for a Continuance of Hearing on Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365 (a) [Doc. No. 467]
6) Debtor's Opposition to Emergency Motion for a Continuance of Hearing on Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) [Doc. No. 471]
7) Order Continuing Debtor's Motion to Reject Executory Contract with J.S.E. Emergency Medical Group from October 26, 2016 at 10:00 a.m. to October 31,

2:00 PM

**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

2016 at 10:00 a.m. [Doc. No. 472]

8) Order Approving Stipulation to Continue Hearing on Debtor's Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) [continuing hearing from 10:00 a.m. on October 31, 2016 to 2:00 p.m. on October 31, 2016] [Doc. No. 488]
9) Sur-Reply of JSE Emergency Medical Group, Inc. in Further Opposition to Debtor's Motion to Reject Executory Contract with J.S.E. Emergency Medical Group, Inc. Pursuant to 11 U.S.C. §365(a) ("Sur-Reply") [Doc. No. 491]
   a) Original Signature Page to Declaration of Joseph Englanoff in Support of Sur-Reply [Doc. No. 494]

## I. Facts and Summary of Pleadings

Gardens Regional Hospital and Medical Center, Inc. ("Debtor") moves to reject an executory contract with J.S.E. Emergency Medical Group, Inc. ("JSE"). Debtor operates a general acute care hospital located at 21530 South Pioneer Boulevard, Hawaiian Gardens, CA (the "Hospital"). JSE employs and contracts with physicians who specialize in emergency medicine. On April 1, 2005, Debtor entered into an Agreement for Emergency Medical Services (the "EMS Agreement") with JSE. Under the EMS Agreement, JSE provides physicians to staff the Hospital's emergency department twenty-four hours per day, seven days per week, three hundred sixty-five days per year.

The terms of the EMS Agreement have been amended four times. The key terms of the most recent version of the EMS Agreement are as follows:

1) Debtor pays JSE $83.16 per hour of coverage, which equals $59,875.20 in a 30-day month or $61,871.04 in a 31-day month.
2) Debtor provides professional liability insurance ("Malpractice Insurance") on behalf of JSE and its providers with respect to their services under the EMS Agreement. The Malpractice Insurance "shall provide coverage for occurrences or claims during the term of this Agreement and any renewal thereof …. [Debtor] agrees to purchase, at its own expense, 'tail' coverage, if warranted." EMS Agreement at ¶7.1.
3) JSE directly bills and collects for professional services rendered under the EMS Agreement.
4) Absent cause, the EMS Agreement may not be terminated unless the party terminating the agreement provides 120 days notice to the other party. EMS Agreement at Amendment No. 4.

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**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

Debtor seeks to reject the EMS Agreement so that it can enter into a new agreement with Premier Health Partners, Inc. ("Premier"). Premier will provide the same services as JSE, but at a much lower rate. Premier's compensation is as follows:

1) Payment of $15,000 per month, but only for the first three months. After the first three months, Premier will not receive any payment other than the amounts that it bills directly to patients. (This contrasts with payment to JSE of $59,875.20 in a 30-day month.)
2) Premier will be required to purchase its own Malpractice Insurance (under the EMS Agreement, the Debtor is required to provide Malpractice Insurance on JSE's behalf).
3) There is no provision for tail coverage (the EMS Agreement requires the Debtor to provide JSE with "tail coverage, if warranted").

The EMS Agreement's provisions pertaining to tail coverage are relevant to the dispute between the Debtor and JSE. There are two basic types of professional liability insurance: occurrence-based policies and claims-made policies. Under a claims-made policy, only claims which are reported within a specified period of time are covered. A claims-made policy can be augmented with tail coverage, which extends the reporting period in perpetuity. Tail coverage is unnecessary under an occurrence-based policy, which covers any occurrence during the policy period regardless of when the claim is made. The Debtor has purchased a claims-made policy to cover JSE's physicians, but has not purchased tail coverage.

**Summary of JSE's Opposition**

JSE opposes the Debtor's rejection of the EMS Agreement for the following reasons:

First, the Debtor does not intend to purchase tail coverage for the post-petition, pre-rejection period. The failure to provide tail coverage violates the EMS Agreement. Either the Debtor must provide evidence of an occurrence-based policy that is effective through the date of rejection, or it must purchase a standalone tail policy perpetually extending the reporting period for claims relating to the post-petition period. While the estate has the legal right to reject the EMS Agreement, it cannot cherry-pick the terms of the contract while it remains in force.

Second, JSE is logistically required to schedule its physicians at least ninety days in advance. JSE's scheduling requirements are the reason for the EMS Agreement's

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**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

provision that at least 120 days notice of termination be provided. If the contract is terminated without notice, doctors and agencies that JSE has committed to pay will still have to be paid. Rejection of the EMS Agreement will cause JSE to suffer at least $300,000 in damages. The rejection disproportionately damages JSE, and should not be authorized for that reason."[I]t is proper for the court to refuse to authorize rejection of a lease or executory contract where the party whose contract is to be rejected would be damaged disproportionately to any benefit to be derived by the general creditors." *Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982).

In the event that the Court allows the Debtor to reject the EMS Agreement, JSE's damages should be treated as an administrative expense under §503(b)(1)(A). Without physicians in its emergency room, the Debtor cannot operate, and JSE's securing of advance staffing provides a crucial safety net for the Debtor.

Third, the Debtor's rejection of the EMS Agreement is in bad faith, because the rejection appears to be in retaliation for JSE's reporting of violations of the Emergency Medical Treatment and Labor Act ("EMTALA"). According to the Declaration of Dr. Joseph Englanoff:

> In August 2016, JSE began to receive reports from its independently contracted emergency room doctors that case managers at the Gardens Regional Hospital were attempting to intercept ambulances with indigent patients at the hospital entrance and redirect them to other emergency rooms….
>
> Upon receipt of this information, I contacted Mr. Stan Otake, the Chief Executive Officer of the hospital and informed him of it. My expectation was that I would receive a formal response comprehensively addressing the issue. I also expected that the hospital would self-report its own violations to regulators to maintain its own credibility in case improper transfers of patients were reported by nearby emergency facilities.
>
> Mr. Otake did not respond.
>
> In recent years, the hospital has had some well-publicized legal problems, including being sued by the City of Los Angeles for alleged dumping of patients on Skid Row.
>
> In the circumstances, JSE has been understandably vigilant and has a policy of reporting violations. Apart from its concern for patient health, it does not wish to be deemed guilty by association with such practices or to be blacklisted by Medicare. In recent months, after issues related to the ER

coverage and patient abandonment and hospital obligations came to light, I contacted Eric Stone, a program manager at the Health Facilities Inspection Division of the Los Angeles County Department of Public Health to report the violations.

I am informed and believe that, once Mr. Otake became aware of this report, he made it known within the hospital administration that the Debtor would not work with anyone who reported the hospital to regulators. At that point, I anticipated a retaliatory termination by the hospital and involved JSE's counsel.

On September 13, 2016, counsel for JSE wrote to counsel for the Debtor, admonishing the Debtor not to engage in the retaliatory conduct that JSE believed was imminent….

On September 14, 2016, Mr. Otake for the first time responded to me formally about my earlier complaints of EMTALA violations, falsely purporting that an email of September 10, 2016, was the first time the issue was brought to his attention….

On September 16, 2016 this motion [to reject JSE's contract] was filed. Englanoff Decl. at ¶¶4–12.

A court "should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 670 (9th Cir. 2007). The Debtor's apparent retaliatory rejection of the EMS Agreement suggests that its decision is based on bad faith, whim, or caprice.

**Summary of Debtor's Reply to JSE's Opposition**

The Debtor's Reply to JSE's Opposition may be summarized as follows:

Rejecting the EMS Agreement is an Exercise of the Debtor's Sound Business Judgment

The only objection made by JSE worthy of consideration is whether rejection of the EMS Agreement is an exercise of the Debtor's sound business judgment. Rejecting the EMS Agreement will confer great benefit on the estate. The Debtor will save approximately $45,000 per month in each of the first three months, and then $60,000 every month thereafter, for a total savings of more than $300,000 in the first

six months following rejection.

The Debtor is Not Obligated to Provide Tail Coverage for the Post-Petition Pre-Rejection Period

Rejection of an executory contract does not terminate the contract, but rather effectuates an immediate prepetition breach, which entitles the counterparty to an unsecured prepetition damages claim. §365(g)(1). Upon rejection, JSE will have a claim against the Debtor for its obligations under the EMS Agreement as of the petition date, but such claim is monetary and dischargeable in the Debtor's bankruptcy case, with no specific performance required. As one court has explained:

> Rejection of an executory contract, because it constitutes a breach, does not terminate the contract. Accordingly, the rights and obligations of the parties remain intact after a rejection because "[r]ejection does not change the substantive rights of the parties to the contract, but merely means the bankruptcy estate itself will not become a party to it." …
>
> Once the determination not to assume a contract has been made, and as set out in §365(g), the contract is treated as if it had been breached just before the bankruptcy petition was filed. "The liabilities are not repudiated; to the contrary, as the rejection-as-breach doctrine is designed to insure, the contract or lease liabilities remain intact after rejection and give the non-debtor party a claim in the distribution of the estate." In this way, the non-debtor is treated no differently than other claimants, and the obligations owed to the non-debtor do not disappear. All monetary claims by the nondebtor party whether existing or arising from the rejection breach, are subject to discharge, which furthers the debtor's fresh start.

*In re Alongi*, 272 B.R. 148, 153 (Bankr. D. Md. 2001) (internal citations omitted).

Because the Debtor is rejecting rather than terminating the EMS Agreement, providing tail coverage is not "warranted." *See* EMS Agreement at ¶7.1 ("[Debtor] agrees to purchase, at its own expense, 'tail' coverage, if warranted."). In *In re Alongi*, the court held that because "[t]he rejection of the Contract did not terminate the Contract; rather, upon rejection, the Contract is treated as if it had been breached immediately before Debtor filed her bankruptcy petition . . . [u]nder the terms of the Contract, such breach did not activate . . . the malpractice tail insurance provision, [which was] activated only upon termination of the Contract." *Id.* at 155. Although the EMS Agreement does not contain the same termination language as in *Alongi*, the contract's language "if warranted" demands the same result. Rejection of the EMS

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**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

Agreement does not effect a termination, and all obligations thereunder remain valid as prepetition claims; accordingly no tail coverage is warranted.

JSE is Not Entitled to an Administrative Priority Claim

JSE's Opposition to the rejection of the EMS Agreement is not the proper context in which to determine JSE's entitlement to an administrative priority claim. Nonetheless, JSE is not entitled to an administrative priority claim on account of the fact that it is logistically required to schedule its physicians ninety days in advance. To be entitled to administrative priority, JSE must have entered into a post-petition contract with the Debtor. *See, e.g., Abercrombie v. Hayden Corp. (In re Abercrombie)*, 139 F.3d 755, 758 (9th Cir. 1998) ("[P]repetition contracts do not trigger administrative expense priority when the debtor's liability was fixed and irrevocable at the time of filing."). The EMS Agreement was entered into prepetition.

Debtor's Rejection of the EMS Agreement is Not in Retaliation for JSE's Reporting of EMTALA Violations

The Debtor's Motion to reject the EMS Agreement is not the appropriate context for adjudicating JSE's retaliatory conduct allegation. Disputed issues under a rejected contract should instead be adjudicated in a subsequent adversary proceeding:

> Based on the nature of a motion to reject and its complementary proceedings, it is inappropriate for the court to resolve questions involving the validity of a contract at the time of rejection. As the Second Circuit noted in *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095 (2d Cir.1993), "permitting a bankruptcy court to rule conclusively on a decisive issue of breach of contract would render the use of 'business judgment' ... unnecessary." *Id.* at 1099. *Orion* correctly recognizes that adjudicating the validity of a contract at the time of rejection would turn a summary proceeding into a full trial on the merits, a result that would be inconsistent with the procedures found in the Bankruptcy Code. Instead, our approach gives effect to the plain language of the Bankruptcy Code and allows a bankruptcy judge to postpone consideration of the validity of a contract until a full adversary proceeding can take place.

*Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000).

In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 671 (9th Cir. 2007), the court affirmed the Bankruptcy Court's rejection of a provider agreement between the debtor healthcare network and the counterparty

cardiologist. The court then considered the cardiologist's retaliation claim, which had been presented in the context of an adversary proceeding. As in *Pomona Valley*, JSE's claims for retaliatory termination should be raised in an adversary proceeding.

The Debtor denies JSE's allegations of any EMTALA violation. The Debtor is aware of only one near-violation, which was prevented by the Hospital before it became a violation. On August 18, 2016, a case manager attempted to divert a patient who arrived at the emergency room to a different hospital, but Glorita Rebueno, the Emergency Room Registered Nurse, intervened and prevented this. *See* Rebueno Decl. at ¶¶2–3. The Debtor denies JSE's allegation that it failed to respond to JSE's concerns regarding the August 18 incident. *See* Supplemental Otake Decl. at ¶14–15 ("I have never spoken to Dr. Englanoff on this incident. I have never received a telephone call from Dr. Englanoff on this incident. I never received a letter from Dr. Englanoff on this incident. The only communication I have ever received from Dr. Englanoff on the attempted redirection of a patient is an e-mail dated September 10, 2016, which alleges that Gardens is routinely engaging in illegal actions and that the KPC case management team is outside the ER ambulance entrance to dissuade paramedics from bringing indigent/intoxicated patients to our hospital…. These statements are false. Contrary to Dr. Englanoff's assertion, he did not bring this matter to my attention prior to sending me an e-mail on Saturday, September 10th. I responded to Dr. Englanoff by email on Tuesday, September 14th ….").

The Debtor denies Dr. Englanoff's allegation that Mr. Otake "made it known that the Debtor would not work with anyone who reported the hospital to regulators." This allegation is made only upon information and belief, and should be stricken from the record.

**Summary of JSE's Sur-Reply**

The Court permitted JSE to file a Sur-Reply to respond to additional evidence that the Debtor submitted in its Reply that was not included in the original Motion. JSE's Sur-Reply may be summarized as follows:

The Debtor Should be Required to Purchase Tail Coverage

JSE will withdraw its Opposition if the Debtor is required to provide tail coverage to JSE's physicians for the post-petition, pre-rejection period. The Debtor incorrectly argues that under the EMS Agreement, it is required to purchase tail coverage only "if warranted." The Debtor's construction of the EMS Agreement is inconsistent with the intent of the parties. Regarding the insurance the Debtor is required to purchase, the

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**CONT... Gardens Regional Hospital and Medical Center, Inc.** **Chapter 11**

EMS Agreement states: "Further, such insurance shall provide coverage for *occurrences* or claims during the term of this Agreement …. Facility [Debtor] agrees to purchase, at its own expense, 'tail' coverage, if warranted." EMS Agreement at ¶7.1 (emphasis added).

The clear import of this provision is that JSE's physicians would have liability insurance for all *occurrences* while they were on the job at the hospital. The reason for the inclusion of the language requiring the Debtor to provide "'tail' coverage, if warranted" was that tail coverage would be necessary to provide insurance for all occurrences in the event the Debtor chose to purchase a claims-made policy, rather than an occurrence-based policy. The provision was not intended to allow the Debtor to avoid providing coverage for all occurrences during the term of JSE's employment.

Contrary to the Debtor's position, the issue of whether JSE is entitled to tail coverage is relevant to the instant Motion. If the Debtor does not purchase tail coverage, JSE will have a substantial administrative claim against the estate. If the savings from switching to Premier are offset by JSE's administrative claim, then the Debtor's rejection of the EMS Agreement is not an exercise of sound business judgment.

In addition, *In re Alongi*, cited by the Debtor, actually supports JSE's position that the EMS Agreement's tail coverage provision survives rejection and is not dischargeable. *Alongi* states:

> The rejection of the Contract did not terminate the Contract; rather, upon rejection, the Contract is treated as if it had been breached immediately before Debtor filed her bankruptcy petition. Under the terms of the Contract, such breach did not activate the Covenant or the malpractice tail insurance provision, those provisions are activated only upon termination of the Contract.

*In re Alongi*, 272 B.R. 148, 156 (Bankr. D. Md. 2001).

If the Court accepts the Debtor's position that the issue of tail coverage is not ripe for adjudication at this time, the following should happen to ensure that JSE and the emergency room doctors are not left exposed to uninsured multi-million dollar liabilities for their services to the estate:

1) The general and professional liability insurance policies must be kept in place pending a final hearing on JSE's administrative claim;
2) The alleged cost of the tail coverage should be segregated from the purchase price paid at closing by the buyer of the hospital; and
3) The Debtor should be ordered to provide all necessary cooperation and documents

to JSE to ensure there is no gap in coverage at any point, however the issue is decided.

Evidence of the Debtor's Bad-Faith Retaliation Has Increased Subsequent to the Filing of the Motion

The evidence that the Debtor rejected the EMS Agreement in bad-faith retaliation for JSE's reporting of EMTALA violations was deemed sufficiently credible by the Creditor's Committee and the U.S. Trustee that the Debtor was forced to bow to pressure and stipulated to the appointment of a Patient Care Ombudsman.

The Contract with Premier Should Not be Taken at Face Value

JSE is informed and believes that Premier is almost certainly receiving enhanced compensation from Strategic at one of Strategic's other facilities in return for its below-cost provision of services to the Hospital in the short-term. According to the Supplemental Declaration of Dr. Englanoff:

> I have reviewed the debtor's proposed contract with Premier Health Partners, Inc. ("Premier"), and I have knowledge that Premier plans to service the debtor's emergency room with certain physicians currently under contract with JSE, whose compensation will be enhanced by Premier. Based on my almost 20 years' experience as CEO of JSE, and nearly a decade of servicing the debtor's emergency room, I can categorically say that it is not possible to profitably service the emergency room at the rates that Premier is ostensibly offering. Even if Premier bills insurance companies extremely aggressively, it will be operating at tens of thousands of dollars below cost per month.

Supplemental Englanoff Decl. at ¶3.

**Joinder to the Debtor's Reply by the Official Committee of Unsecured Creditors**

The Official Committee of Unsecured Creditors ("Committee") joins the Debtor's Reply to JSE's Opposition. The Committee supports rejection of the EMS Agreement and takes the position that any issues relating to JSE's claim for rejection damages should be resolved at a later time through an appropriate claims resolution proceeding. The Committee's counsel has conferred with the Debtor's counsel and the U.S. Trustee regarding JSE's allegations of improper patient diversion. It appears to the Committee that the Hospital's internal controls worked properly in connection with the August 18 incident.

## II. Findings and Conclusions

The Court Approves Rejection of the EMS Agreement

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract:

> In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." …
>
> Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

*Pomona Valley*, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that the Debtor exercised its sound business judgment in determining to reject the executory contract, and that rejection of the contract will inure to the benefit of unsecured creditors. The contract with JSE costs the Debtor approximately $60,000 per month, and requires the Debtor to provide Malpractice Insurance to JSE's physicians. The new contract with Premier costs $15,000 per month for the first three months. After the first three months, the contract does not cost anything; Premier's payments will be limited to amounts it bills directly to patients. The contract with Premier does not require the Debtor to provide Malpractice Insurance. In the first six months of the contract, the estate will save approximately $300,000. Supplemental Otake Decl. at ¶7.

The Court does not consider JSE's allegation that Premier is receiving undisclosed kickbacks from Strategic in exchange for providing a lower rate on its contract with

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the estate. First, this allegation is utterly unsubstantiated. Second, it is irrelevant. The only issue of import is whether the contract with Premier saves the estate money, which it clearly does.

Other Issues Raised by JSE Are Not Appropriate for Determination in the Context of the Instant Motion

JSE raises several issues that the Court finds are not appropriate for determination within the context of the Debtor's Motion to reject the EMS Agreement. In determining whether to approve the Debtor's rejection of the EMS Agreement, the only relevant issue is whether rejection will benefit general unsecured creditors. *See Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982) ("The primary issue is whether rejection would benefit the general unsecured creditors."). As discussed above, rejection of the EMS Agreement will save the estate approximately $300,000 over a six-month period. These savings amply demonstrate the benefits of rejection to the unsecured creditors. Rejection is also supported by the Official Committee of Unsecured Creditors.

Permitting litigation of the other issues raised by JSE would unnecessarily delay determination of the Debtor's motion to reject the EMS Agreement. Delay would ultimately harm the unsecured creditors. If the EMS Agreement is not rejected prior to November 1, the estate will incur approximately $45,000 in additional costs (the $60,000 cost of the EMS Agreement less the $15,000 cost of the new contract with Premier).

The Court's refusal to permit litigation at this time of the other issues raised by JSE does not leave JSE without recourse. With respect to JSE's contention that it is entitled to an administrative claim to compensate it for damages incurred as a result of its need to schedule and provide payment to physicians ninety days in advance, JSE can file a proof of claim. With respect to JSE's contention that the Debtor is obligated to purchase tail coverage for the post-petition pre-rejection period, JSE's possible remedies including filing a proof of claim for damages arising from the rejection of an executory contract pursuant to §502(g) and filing an administrative claim pursuant to §503(b)(1)(A).

JSE requests that the Court impose the following requirements upon the Debtor pending a hearing on its administrative claim:

1) The general and professional liability insurance policies must be kept in place pending a final hearing on JSE's administrative claim;
2) The alleged cost of the tail coverage should be segregated from the purchase price

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paid at closing by the buyer of the hospital; and

3) The Debtor should be ordered to provide all necessary cooperation and documents to JSE to ensure there is no gap in coverage at any point, however the issue is decided.

The Court will order the Debtor to provide documentation regarding coverage to JSE, but declines to impose any of the other requested requirements. The Bankruptcy Code contains mechanisms for counterparties to an executory contract to recover damages in connection with the Debtor's rejection of that contract. JSE's remedy is to seek relief through those statutory mechanisms, rather than to seek to impose additional requirements upon the Debtor as the price of the Court granting the Debtor's Motion to reject JSE's executory contract.

JSE further argues that the tail coverage issue is relevant because the money the estate saves by switching to Premier could be offset by JSE's administrative claim for tail coverage. This argument overlooks the fact that if JSE is indeed entitled to tail coverage, the Debtor would have to purchase that coverage regardless of whether the EMS Agreement is rejected. Therefore, whatever the ultimate disposition of any administrative claim filed by JSE, rejection of the EMS Agreement will still save the estate money. **[Note 1]**

JSE contends that Debtor is rejecting the EMS Agreement in retaliation for JSE's reporting of alleged EMTALA violations. JSE argues that this alleged retaliatory rejection is based not "on sound business judgment, but only on bad faith, or whim or caprice." *Pomona Valley*, 476 F.3d at 670. Given the substantial savings that the Debtor will achieve through rejecting the EMS Agreement, the Court cannot find that the rejection decision is based solely on bad faith, whim, or caprice. Further, a motion to reject is not the appropriate proceeding in which to consider disputed issues arising under the rejected contract. As the Ninth Circuit has held, "[b]ased on the nature of a motion to reject and its complementary proceedings, it is inappropriate for the court to resolve questions involving the validity of a contract at the time of rejection…. [A]djudicating the validity of a contract at the time of rejection would turn a summary proceeding into a full trial on the merits, a result that would be inconsistent with the procedures found in the Bankruptcy Code." *Durkin v. Benedor (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000). JSE may raise its claims for retaliatory termination through an adversary proceeding. That was the procedure followed by the counterparty whose lease was rejected in *Pomona Valley*.

Rejection of the Executory Contract Does Not Disproportionately Damage JSE

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The Court may decline to authorize the rejection of an executory contract "where the party whose contract is to be rejected would be damaged disproportionately to any benefit to be derived by the general creditors." *Robertson v. Pierce (In re Chi-Feng Huang)*, 23 B.R. 798, 801 (B.A.P. 9th Cir. 1982). Here, JSE will not be disproportionately damaged by rejection of the EMS Agreement given the significant savings that will accrue to the estate. In addition, JSE will have a §502(g) claim for damages in connection with the Debtor's rejection of the EMS Agreement, putting it on par with the Debtor's other unsecured creditors. As explained by the *Huang* court, the "fact that the expectations of a [counterparty whose contract is rejected] are disappointed is not sufficient grounds standing alone to deny the [Debtor] permission to reject. Any rejection will inevitably entail the disappointment of legitimate expectations. A basic policy of the bankruptcy laws is to spread the burdens evenly among both those who may have loaned the debtor money and those who might have obtained a profit from dealing with him." *Huang*, 23 B.R. at 801.

Adjudication of the Motion Need Not Await the Debtor's Responses to JSE's Requests for Production

JSE has served Requests for Production of Documents ("Requests for Production") upon the Debtor, to which the Debtor has not yet responded. The record presently before the Court is sufficient to enable it to adjudicate the primary issue presented by the Motion—whether the Debtor exercised its sound business judgment in deciding to reject its executory contract with J.S.E. The record includes the executory contract with JSE, the contract with Premier Health Partners, Inc. that the Debtor proposes to enter into after rejecting JSE's contract, and testimony regarding the savings that the Debtor will achieve through rejection. Any evidence that might be produced in connection with JSE's pending Requests for Production would not be of assistance to the Court. And the delay attending the production of such evidence would be highly prejudicial to the Debtor and to the estate.

Bankruptcy Rule 9014 gives the Court discretion to order that certain of the Part VII Rules will not apply in a contested matter. Such an order is appropriate where the needs of the case require a speedy determination of certain issues. In *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310 (Bankr. D. Utah 1981), the court found that the necessity of quickly adjudicating the debtor's motion to reject an executory contract warranted dispensing with Bankruptcy Rule 7056, even though Rule 9014 makes Rule 7056 applicable in contested matters. *Id.* at 313. The court rejected the argument, presented by the counterparties to the executory contract, that "insufficient

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time has been allotted for discovery." *Id.* The court explained that it was "sensitive to the need for swift administration of estates" and that the "delay characteristic of most litigation frustrates this policy." *Id.* The concerns expressed by the *Summit Land* court apply here. Delaying adjudication of the Motion to permit introduction of evidence produced in response to JSE's Requests for Production is not warranted, where such delay will severely prejudice the Debtor, and where the record already before the Court is sufficient.

Conclusion

Based upon the foregoing, the Debtor's Motion to reject the EMS Agreement is GRANTED. Rejection of the EMS Agreement is effective as of October 31, 2016. The Court will enter an appropriate order.

**Note 1**

While the Court does not determine at this time whether the Debtor is required to purchase tail coverage, the Court notes that both parties devote substantial briefing to whether *In re Alongi* requires the Debtor to provide tail coverage. While *Alongi* contains a helpful discussion of the effects of rejection under §365, its specific holding is inapposite. First, the rejected executory contract in *Alongi* was materially different from the EMS Agreement at issue here. The contract in *Alongi* required the purchase of tail coverage only upon termination of the contract. Accordingly, a key issue in *Alongi* was whether and when the contract had been terminated. By contrast, the EMS Agreement's provisions regarding tail coverage do not depend upon whether the EMS Agreement has been terminated.

Second, *Alongi* was a Chapter 7 case, meaning that the discharge applied as of the date of the filing of the petition. In the instant Chapter 11 case, the discharge takes effect upon confirmation of the plan. *See* §1141(d)(1)(A). *Alongi* held that the contract's obligation to purchase tail coverage was triggered by the debtor's post-petition termination of the contract. The court concluded that the post-petition tail coverage obligation was not dischargeable, given that in Chapter 7 the discharge applies as of the date of the petition. Because in Chapter 11 the discharge takes effect upon confirmation, the *Alongi* court's discussion of whether the obligations under the rejected executory contract were discharged does not apply here.

**Party Information**

# United States Bankruptcy Court
# Central District of California
## Los Angeles
## Judge Ernest Robles, Presiding
## Courtroom 1568 Calendar

**Monday, October 31, 2016** **Hearing Room 1568**

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**Debtor(s):**

| | |
|---|---|
| Gardens Regional Hospital and | Represented By<br>Samuel R Maizel<br>John A Moe<br>Steven J. Katzman |